



[Investigation No. 337-TA-1132 (Modification)]

**Certain Motorized Vehicles
and Components Thereof; Notice of Commission Determination to Modify
Remedial Orders; Termination of Modification Proceeding**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to adopt with modification the findings of the presiding Administrative Law Judge (“ALJ”) in the Recommended Determination (“RD”) and to modify the limited exclusion order (“LEO”) and cease and desist orders (“CDOs”) (collectively, “the remedial orders”) issued in this investigation to exempt the respondents’ redesigned product from the scope of the remedial orders. The modification proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 13, 2018, based on a complaint, as amended, filed by FCA US LLC of Auburn Hills, Michigan (“Complainant”). *See* 83 FR 46517 (Sept. 13, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (“section 337”) based

upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain motorized vehicles and components thereof by reason of: (1) infringement of U.S. Trademark Registration Nos. 4,272,873; 2,862,487; 2,161,779; 2,794,553; and 4,043,984 (collectively, “the Asserted Trademarks”); (2) trademark dilution and unfair competition in violating the complainant’s common law trademark rights; and (3) trade dress infringement. *See id.* The notice of investigation names Mahindra & Mahindra Ltd. of Mumbai, India and Mahindra Automotive North America, Inc. of Auburn Hills, Michigan (collectively, “Respondents”) as respondents in this investigation. *See id.* The Office of Unfair Import Investigations is also a party to this investigation. *See id.*

On November 8, 2019, the ALJ issued a final initial determination (“FID”) finding a violation of section 337. Specifically, the FID determined that Respondents’ Roxor vehicle (2018-2019 model) infringes FCA’s asserted trade dress but not its Asserted Trademarks. The FID also determined that Complainant did not establish trademark dilution.

On June 11, 2020, the Commission determined to affirm the FID’s determination of a violation of section 337. *See* 85 FR 36613-14 (June 17, 2020). The Commission issued an LEO barring entry of articles that infringe the asserted trade dress and CDOs against both Respondents. The Commission declined to adjudicate Respondents’ proposed redesigned vehicles and required Respondents to obtain a ruling (via an advisory opinion or a modification proceeding) from the Commission prior to any importation of redesigned vehicles or components thereof.

On June 18, 2020, Respondents filed a petition for an expedited modification proceeding. On July 20, 2020, the Commission determined to institute a modification proceeding under section 337(k) (19 U.S.C. 1337(k)) and Commission Rule 210.76 (19 CFR 210.76) to adjudicate trade dress infringement with respect to respondents' redesigned vehicle ("the Post-2020 ROXOR"). *See* 85 FR 44923-24 (July 24, 2020).

On October 20, 2020, the ALJ issued his RD finding no trade dress infringement by Respondents' Post-2020 ROXOR vehicle. On October 30, 2020, Complainant filed comments on the RD requesting that the Commission decline to adopt the RD's findings. On November 6, 2020, Respondents and the Commission's Investigative Attorney filed responses in opposition to Complainant's comments.

Having reviewed the record of the underlying violation investigation, as well as the record of the modification proceeding, including the RD and the parties' comments and responses thereto, the Commission has determined to modify the LEO and CDOs to include an explicit exemption with respect to Respondents' Post-2020 ROXOR vehicle adjudicated in this modification proceeding. As explained in the Commission Opinion issued concurrently herewith, the Commission adopts the RD's findings with modification and affirms the RD's conclusion that the Post-2020 ROXOR vehicle does not infringe Complainant's asserted trade dress. The modification proceeding is terminated.

The Commission's vote on this determination took place on December 22, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 22, 2020.

Katherine Hiner,
Acting Secretary to the Commission.

